

Message Text

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ORIGIN OPIC-06

INFO OCT-01 NEA-10 ISO-00 EB-07 L-03 COME-00 FEA-01 OES-03

CIAE-00 INR-07 NSAE-00 /038 R

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R 251557Z NOV 75
FM SECSTATE WASHDC
TO AMEMBASSY MUSCAT

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E.O. 11652:N/A

TAGS: EFIN

SUBJECT: OPIC INVESTMENT INCENTIVE AGREEMENT

REF: MUSCAT 1290

1. FOLLOWING ARE RESPONSES TO OMANGOV CONCERNS IN SAME
ORDER AS STATED IN PARA 2 REFTEL:

A. OPIC INSURES AGAINST THE POLITICAL RISKS OF INCONVERTI-
BILITY, LOSS DUE TO EXPROPRIATION AND LOSS DUE TO WAR,
REVOLUTION OR INSURRECTION. INCONVERTIBILITY COVERAGE HOW-
EVER DOES NOT PROVIDE INSURANCE AGAINST DEVALUATION OF LOCAL
CURRENCY. OPIC ALSO ISSUES GUARANTIES OF LOANS AND OTHER
INVESTMENT ASSURING AGAINST LOSS DUE TO ALL TYPES OF RISKS
INCLUDING THE ABOVE POLITICAL RISKS AND "ALL" COMMERCIAL
RISKS.

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B. PARAGRAPH 1 AND 2 OF DRAFT AGREEMENT GIVES OMANGOV RIGHT OF PRIOR REVIEW AND ABSOLUTE DISCRETION WITH REGARD TO APPROVAL OR NONAPPROVAL OF INVESTMENTS IN PROJECTS OR ACTIVITIES IN OMAN. OPIC WILL NOT REPEAT NOT ISSUE ANY INVESTMENT INSURANCE OR GUARANTIES FOR INVESTMENTS IN PROJECTS OR ACTIVITIES NOT APPROVED BY THE OMANGOV. UNDER THE NORMAL PROCEDURE, THE INVESTOR APPLYING FOR OPIC INSURANCE IS INSTRUCTED TO NOTIFY THE COMPETENT HOST GOV'T AUTHORI-

TIES OF HIS INVESTMENT PLANS AND TO REQUEST THAT SAID AUTHORITIES NOTIFY OPIC THROUGH THE U.S. EMBASSY WHEN THE PROJECT OR ACTIVITY IS APPROVED FOR PURPOSES OF OPIC COVERAGE.

C. LAST SENTENCE IN PARA 3 WHICH READS "THE ISSUING GOVERNMENT DOES, HOWEVER, RESERVE ITS RIGHTS TO ASSERT A CLAIM IN ITS SOVEREIGN CAPACITY UNDER INTERNATIONAL LAW; IS A NECESSARY QUALIFICATION TO THE SUBROGATION PROVISIONS SINCE THE USG IN ITS CAPACITY AS THE ISSUER IS SUBROGATED ONLY TO THOSE RIGHTS WHICH THE TRANSFERRING INVESTOR HAS AND WOULD BE IN A POSITION COMPARABLE TO A COMMERCIAL INSURANCE COMPANY. HOWEVER, THE USG AS A SOVEREIGN, AS DISTINCT FROM THE ISSUER, MAY HAVE INTERNATIONAL CLAIM RIGHTS IN ITS SOVEREIGN CAPACITY. WITHOUT SUCH PROVISION IN PARAGRAPH 3 RESERVING THE RIGHT OF THE USG TO ASSERT A CLAIM IN ITS SOVEREIGN CAPACITY UNDER INTERNATIONAL LAW, PARAGRAPH 3 OF THE DRAFT AGREEMENT COULD BE INTERPRETED AS A WAIVER BY THE USG TO ASSERT SUCH INTERNATIONAL CLAIM RIGHTS.

D. OMANGOV CONCERN OF POSSIBILITY OF USG INDIRECTLY THROUGH OPIC SUCCEEDING TO PROPRIETARY INTERESTS UNDER CERTAIN CIRCUMSTANCES IN VITAL SECTORS OF OMAN ECONOMY IS COVERED BY ARTICLE 4 OF THE DRAFT AGREEMENT.

2. OPIC WOULD APPRECIATE EMBASSY PROVIDING OPIC INSURANCE OFFICER JON SARFF WITH ABOVE IMMEDIATELY UPON SARFF'S ARRIVAL IN MUSCAT.

3. COPY OF LEGISLATION GOVERNING OPIC PROGRAMS BEING LIMITED OFFICIAL USE

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POUCHED TO EMBASSY THIS DATE FOR EMBASSY INFORMATION ONLY. FROM PAST EXPERIENCE OF HOST GOVERNMENT MISINTERPRETATION OF OPIC LEGISLATION WHICH HAS IN SOME CASES RESULTED IN FURTHER PROBLEMS AND DELAYS IN CONCLUDING BILATERALS, OPIC STRONGLY SUGGESTS THAT EMBASSY NOT REPEAT NOT RELEASE COPY OF OPIC LEGISLATION TO OMANGOV. INGERSOLL

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Message Attributes

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